

ARKANSAS STATE BOARD OF PHARMACY
101 East Capitol, Suite 218
Little Rock, AR 72201

The Arkansas State Board of Pharmacy met for a regular scheduled meeting on June 10-11, 2004. The meeting was held at the DoubleTree Hotel, 424 West Markham, Riverside West Room, Little Rock, Arkansas.

Thursday, June 10, 2004

The meeting was called to order by Lenora Newsome, P.D., President. Members present were Larry Autry, P.D.; Buddy Bowden, P.D.; Ross Holiman, B.S., H.Ed.; Larry McGinnis, Pharm.D.; and Ronnie Norris, P.D. Staff members present were Charles Campbell, Pharm.D., Executive Director; Margaret Lincourt, Chief Fiscal Officer; Lana Whitmore, Administrative Assistant; Ron Ewing, P.D.; Rusty McSpadden, P.D.; and Jim Myatt, P.D.

BOARD ACTION:

Mr. Holiman made the motion that the minutes of the February 2004 Board Meeting be approved as presented. Dr. Autry seconded the motion. The vote for the motion was unanimous.

BOARD ACTION:

Dr. Norris made the motion that the agency financial report be approved as presented. Dr. Bowden seconded the motion. The vote for the motion was unanimous.

The Board interviewed candidates for Reciprocity. Each applicant was asked a series of questions, including: 1) "Why are you seeking licensure in Arkansas?" 2) "Have you ever appeared before a licensing board for disciplinary action?" 3) "Do you, or have you ever had a problem with drugs or alcohol?" The following candidates were present:

Lisa Adamich	John Ahedor	Melody Allen
Mark Allison	Sherry Boyer	Wendalyn Carney
Michael Ganter	Eric Hadley	Steve Haiber
Thomas Hinckley	Robert Kufta	Parke Largent
John Lightle	Trenton Lott	Bradley Reid
Christine Renfer	Joseph Saylor	Lora Segeleon
Julie Shuffield	Laura Swigert	Duc Tran
Blia Vang	Deanna Worth	

BOARD ACTION:

Dr. Autry made the motion to approve the above applicants for reciprocity licensure in Arkansas, pending receipt of the criminal background check when applicable and the receipt of the NABP reciprocity application from Joseph Saylor. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Campbell explained, in detail, the Arkansas continuing education (CE) requirements to the reciprocity applicants. He told them that since they obtained an Arkansas pharmacist license in first year of the biennium, they would be responsible for meeting Arkansas' CE requirements for 2004-2005.

Ron Coker, P.D., #5990, appeared before the Board to request the reinstatement of his Arkansas pharmacist license. Dr. Coker explained to the Board that his license was revoked in 1995 and that he spent 78 months in a federal prison for intentionally distributing controlled substances outside the scope of professional practice and Medicaid fraud. He told the Board that he has been working as a Quality Control Supervisor at Simmons Foods in Van Buren and that he completed his probation period on April 25, 2004. Dr. Coker said that he felt he was ready to return to the profession of pharmacy. Ron Ewing, P.D., explained that Dr. Coker was on the Federal Exclusion List and that he would not be allowed to work in a facility that processes Medicaid claims.

BOARD ACTION:

Dr. Autry made the motion to deny Ron Coker's request for the reinstatement of his Arkansas Pharmacist License at this time. Dr. Coker should obtain at least 90 hours of continuing education, obtain information from DEA and Medicaid regarding waivers, and to reappear before the Board with a more remorseful attitude. Mr. Holiman seconded the motion. The vote for the motion was four members voted for the motion and one member voted against the motion. The motion passes.

Dr. Campbell told the Board that the Compounding Committee, chaired by Ronnie Norris, was not able to meet as scheduled. He said the committee is scheduled to meet before the next Board meeting and at that time they should have specific recommendations for the Board with regard to specific language regarding restrictions on compounding commercially available products. Dr. Campbell said there is still an issue of supplying compounded Schedule II patient-specific prescriptions to a doctor's office. He said he received an interpretation from DEA citing various federal codes, which states that patient-specific prescriptions may not be dispensed to a doctor's office. He told the Board that he would be sharing this information with Arkansas pharmacists and telling them they may be required to obtain a federal wholesale distributor permit. He said this information will be communicated to out of state pharmacies as well. Dr. Norris said the committee's goal is to be on the same page as DEA.

Dr. Campbell told the Board that the Board inspectors have done inspections in compounding pharmacies in Arkansas. He said that any issues that were found were handled in an educational manner rather than a punitive manner, but future non-compliance would be formally addressed.

Dr. Campbell gave the committee report on pharmacist in charge hours on behalf of Bob Dufour, P.D. Dr. Campbell said that Arkansas is the only state, in our region, that requires a forty-hour work week for the pharmacist in charge. He said the committee made a recommendation to change the requirements in the regulation for a pharmacist in charge to work a minimum of fifty percent of the store hours, up to thirty hours per week, and that a waiver must be approved by the Board of Pharmacy in order for a pharmacy to be open less than forty hours per week (ie., specialty inhalation pharmacies). The Board voiced their concern with having a pharmacist in charge not be classified as a full time pharmacist in the facility. Dr. Autry said he would rather see the minimum set at thirty-two hours, or whatever is considered to be full time.

BOARD ACTION:

Dr. Autry made the motion for the Board staff to change the requirements in the regulation to state that the pharmacist in charge shall work a minimum of fifty percent of the store hours up to 32 hours per week, and for a pharmacy open less than forty hours per week, a waiver must be approved by the Board of Pharmacy. The staff should send the amended regulation to the Board members for review and to publish it thirty days before the next Board meeting. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Randy Davidson, P.D., #8363, appeared before the Board with a representative of the Arkansas Pharmacy Support Group, to request his Agreed Order be converted to a Consent Order. Mike Frost, P.D., from the Support Group spoke on behalf of Dr. Davidson. He said that Dr. Davidson joined the support group in July 2002. He said in November 2002 Dr. Davidson had one positive drug screen. Dr. Frost told the Board that since that time Dr. Davidson has had eighteen negative screens and that he attends the Support Group meetings regularly. Dr. Davidson told the Board that his addiction started after he had two surgical procedures. He said he was then arrested for DWI and possession of a controlled substance, and he received five years probation and he must pay restitution. Dr. Davidson explained that he has been enrolled in graduate school at UAMS. He said Stephanie Gardner, Dean of the College of Pharmacy, informed him that there was a position available in the Poison Center. He said his pharmacist license needs to be in good standing in order for him to be eligible for the position. Kim Light, Ph.D., said the program with the Poison Center would be a great opportunity for Dr. Davidson and that the Support Group advocated the conversion.

BOARD ACTION:

Dr. Autry made the motion to accept the conversion from an Agreed Order to a Consent Order for **Randy Davidson, P.D., # 8363** as presented. Dr. Norris seconded the motion. The vote for the motion was four members voted for the motion and one member voted against the motion. The motion passes.

Board Member, Sharon Capps, RN, is now present at the meeting.

Kenny Trantham, P.D., #7021, appeared before the Board with a representative of the Arkansas Pharmacy Support Group, to request his Agreed Order be converted to a Consent Order. Dr. Trantham told the Board that he worked at Arkansas Children's Hospital, and about three years ago he started having terrible headaches and began to self-medicate with prescription drugs from the pharmacy. He said that he plans to make restitution to the pharmacy. Dr. Trantham said that since he joined the Support Group he has changed his focus on life through recovery, his new relationship with God, and the friends he has made at the Support Group meetings. He said he loves the profession of pharmacy and he feels he is ready to get back into practice. Mike Frost, P.D., with the Support Group, spoke on behalf of Dr. Trantham. He said Dr. Trantham joined the Support Group in August 2003, has had eight negative drug screens, and has attended his regular meetings. Dr. Frost said the Support Group advocated the conversion.

BOARD ACTION:

Dr. McGinnis made the motion to accept the conversion from an Agreed Order to a Consent Order for **Kenny Trantham, P.D., #7021** as presented. Ms. Capps seconded the motion. The vote for the motion was unanimous.

Julia Mills, P.D., #8375, appeared before the Board with a representative of the Arkansas Pharmacy Support Group, to request her Agreed Order be converted to a Consent Order. Mike Frost, P.D., from the Support

Group spoke on behalf of Dr. Mills. He said that her sobriety date was in August 2003. She then participated in a residential treatment program from October 2003 through January 2004 – which is when she signed her Support Group contract. Dr. Frost said that Dr. Mills was brutally honest from the beginning, and that she attends regular meetings and is involved in the recovery process with other individuals. Dr. Mills told the Board that she has had a problem with alcohol for a long time. She said her drug addiction began with Hydrocodone, usually by prescription, and she changed jobs to an IV pharmacy to get away from the temptation, but then she began using injectables. Dr. Mills also said she was providing drugs to her husband who is also now in recovery. Dr. Kim Light spoke on behalf of Dr. Mills and said the Support Group advocated the conversion.

BOARD ACTION:

Dr. Autry made the motion to accept the conversion from an Agreed Order to a Consent Order for **Julia Mills, P.D., #8375** as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Campbell asked the Board to grant him the authority to negotiate a settlement with Landmark Networks, Inc., without precedent.

BOARD ACTION:

Dr. Autry made the motion to deny Dr. Campbell's request for the authority to negotiate a settlement with Landmark Networks, Inc. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

The Board discussed the recently vacated Assistant Director position. Ms. Lincourt told the Board that Dr. Gardner's payout goes through the end of the fiscal year. Dr. Campbell said the person hired for the Assistant Director position needs to be willing to eventually move into the Executive Director position. The Board instructed the staff to begin advertisement for the position after July 1, 2004.

The Board discussed changing the regulations to require pseudoephedrine to be placed in Schedule V in Arkansas, similar to a new Oklahoma law. Dean Sikes, P.D., said if the Board is going to change the regulation, to take into consideration that some products are made so that they cannot be cooked down to make methamphetamine. He said the reason the Oklahoma law works is because they made it a Schedule V, but exempted certain products.

Stephen Ahlert, P.D., #6712, appeared before the Board to request the reinstatement of his Arkansas pharmacist license. Dr. Ahlert explained to the Board that his license was revoked in 1997. He said he was convicted in the United States District Court for dispensing controlled substances outside the scope of practice. He has been called before the Board three times for unauthorized refills. Dr. Ahlert said he has spent time in a federal prison and was issued a \$5,000 fine. He told the Board that he has been working for an engineering firm for over five years. He also said he has kept up the correspondence continuing education, but that he does not have any live hours. Dr. Ahlert said that he enjoyed practicing pharmacy and he knows he made a terrible mistake. He said he would like the opportunity to once again be a licensed pharmacist. Dr. Ahlert cannot work in a pharmacy without a DEA waiver.

BOARD ACTION:

Mr. Holiman made the motion to deny Stephen Ahlert's request for the reinstatement of his Arkansas Pharmacist License at this time. Dr. Ahlert is instructed to get current with the required continuing education hours, retake the Arkansas Jurisprudence Exam, and to reappear before the Board at a later date. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Ron Ewing presented the Board with a charitable clinic application for **Pine Street Free Clinic – Conway, Arkansas**. He told the Board that the clinic has been serving the needs of that population for over two years, with the exception of providing prescription medication. He said that it was a straightforward charitable clinic application, and explained that the clinic was funded strictly by donations – there would be no fee required for services.

BOARD ACTION:

Dr. McGinnis made the motion to approve the charitable clinic application for Pine Street Free Clinic as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Ewing gave the Board an update on other charitable clinics registered with the Arkansas State Board of Pharmacy. He said about half of the clinics ask for a chart fee or a donation for services, but they do not have a fee for pharmacy services. Dr. Ewing told the Board that there are not any registered charitable clinics that have paid professional personnel on staff.

Larry McGinnis, Pharm.D., presented the Board with the committee report regarding remote entry of prescription orders.. He reminded the Board that Cardinal asked for a permit to be able to provide off-site order entry for Arkansas hospitals. Dr. McGinnis said the committee focused primarily on patient care. He said the committee discussed the current Arkansas State Board of Pharmacy requirements, JACHO requirements, and the pharmacist shortage. He said they also discussed automation compatibility, HIPPA requirements, and liability. The committee recommended that each hospital request should be presented on a case-by-case basis, and the hospital must justify why they are requesting the system prior to Board approval; the hospital should be in the same system or within the same organization as the off-site pharmacy; every off-site pharmacist, including the pharmacist in charge, must be licensed by the Arkansas State Board of Pharmacy; automation compatibility, including software, should be mandatory; there should be a clearly defined scope of activities; a written shared liability between the hospital and the off-site pharmacy should be in place; and there should be a clearly defined back-up system in place. Tom Gay said a statute amendment may be necessary in order for all of the off-site pharmacists be required to get an Arkansas pharmacist license. Dr. McGinnis said the committee would like to meet with Cardinal and Jerry Stephens, P.D., before the committee gives their final recommendation to the Board of Pharmacy.

Margaret Lincourt provided the Board an update on Diseases State Management. She is currently working with NISPC and NABP to reconcile pharmacist records for this credential. There have been a few problems in bringing the three organizations' databases into alignment due to the fact that there is a new executive director of NISPC, and a new DSM coordinator at NABP. It will probably be July before the reconciliation can be completed. Ms. Lincourt hopes to have it done by the time we start converting pharmacist records for the new computer licensing system.

Dr. Campbell told the Board that Buddy Bowden, P.D., and Margaret Lincourt rewrote the entire Arkansas Jurisprudence Examination. He said that he thought it was a very good exam and that it has already been administered to the third year pharmacy students at UAMS.

The Board discussed the need for a Board retreat in August. After some discussion, the Board thought it would be necessary to have a retreat and that there should be one day entirely for discussion items and one day for hearings.

Ms. Lincourt told the Board that there may be a conflict with the October 2004 Board meeting. She said the State Board of Pharmacy budget hearing is scheduled for October 13 – the same date of the Board meeting. She said it is mandatory that a representative from the Board office attend the hearing. The Board said to leave the Board meeting dates set for October 12 – 13, 2004.

Dr. Campbell discussed Nursing Assistant medication administration. He said a Bill was presented to the legislature to amend various sections of the Arkansas Code relating to the practice of nursing. Ms. Capps said she talked with Faith Fields, Director of the Nursing Board, and that non-licensed personal would be doing medication administration. She said the Bill is supported by the Nursing Home Association and residential care facilities. The Board discussed sending a letter to oppose the Bill. They decided to follow the Bill and make that decision when appropriate.

Dr. Campbell said the new Board president will need to sign the Authorization to Issue and Execute Subpoenas and the Authorization to Conduct Board of Pharmacy Oversight Activities for 2004 pursuant to Act 1092 of 2003.

Ms. Lincourt informed the Board that mileage reimbursement for Board travel has increased to 34 cents a mile until the price of gas drops below \$1.75.

Ms. Lincourt also gave the Board a report on the computer system upgrade. She said she has been working closely with GL Suite and she anticipates the new system to go live in September or October.

BOARD ACTION:

Ms. Capps made the motion to move consideration of Agreed Orders from Friday, June 11, 2004, at 9:00 a.m., to Thursday, June 10, 2004, at 2:30 p.m. Dr. Bowden seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented the Board with an Agreed Temporary Order for **Jamie Bradberry, Pharmacy Technician #87792**. Ms. Bradberry signed the order, and agreed not to practice as an Arkansas pharmacy technician or be physically present in the prescription department of a pharmacy until approved by the Board.

BOARD ACTION:

Dr. Norris made the motion to accept the Agreed Temporary Order for Jamie Bradberry, Pharmacy Technician #87792 as presented. Dr. McGinnis seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented the Board with an Agreed Temporary Order for **Tracie Reno, Pharmacy Technician #84208**. Ms. Reno signed the order, and agreed not to practice as an Arkansas pharmacy technician or be physically present in the prescription department of a pharmacy until approved by the Board.

BOARD ACTION:

Dr. Bowden made the motion to accept the Agreed Temporary Order for Tracie Reno, Pharmacy Technician #84208 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented the Board with an Agreed Temporary Order for **Christina Freeman, Pharmacy Technician #86775**. Ms. Freeman signed the order, and agreed not to practice as an Arkansas pharmacy technician or be physically present in the prescription department of a pharmacy until approved by the Board.

BOARD ACTION:

Dr. Bowden made the motion to accept the Agreed Temporary Order for Christina Freeman, Pharmacy Technician #86775 as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented the Board with an Agreed Temporary Order for **Rachel Houston, Pharmacy Technician #88183**. Ms. Houston signed the order, and agreed not to practice as an Arkansas pharmacy technician or be physically present in the prescription department of a pharmacy until approved by the Board.

BOARD ACTION:

Mr. Holiman made the motion to accept the Agreed Temporary Order for Rachel Houston, Pharmacy Technician #88183 as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented the Board with an Agreed Temporary Order for **Romelia Walker, Pharmacy Technician #88752**. Ms. Walker signed the order, and agreed not to practice as an Arkansas pharmacy technician or be physically present in the prescription department of a pharmacy until approved by the Board.

BOARD ACTION:

Dr. Norris made the motion to accept the Agreed Temporary Order for Romelia Walker, Pharmacy Technician #88752 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented the Board with an Agreed Temporary Order for **Rachel Crownover, Pharmacy Technician #83883**. Ms. Crownover signed the order, and agreed not to practice as an Arkansas pharmacy technician or be physically present in the prescription department of a pharmacy until approved by the Board.

BOARD ACTION:

Dr. Bowden made the motion to accept the Agreed Temporary Order for Rachel Crownover, Pharmacy Technician #83883 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

A representative from **Landmark Networks, Inc. (LNI), List I Chemical Wholesaler, #C-00086** appeared before the Board in answer to an Order and Notice of Hearing. Allegations in this case were that Landmark Networks, Inc. failed to report to the Board, or to the Drug Enforcement Administration, suspicious transactions of any sale of pseudoephedrine to any of its customers, and that their inventory of List I Chemicals was maintained in a storage facility that had no alarm system or any type of climate control. Dr. Newsome called the meeting to order and turned the proceedings over to the Hearing Officer, Nicana Sherman. Tom Gay, of the Attorney General's Office, represented the Board staff, and Tina Brownstein represented the respondent. Sharon Capps, RN, left the hearing before it was over.

Ms. Brownstein told the Board that Landmark Networks is willing to settle this matter now by ceasing to sell pseudoephedrine products in Arkansas and to relinquish his Arkansas List I Chemical license if the Board would drop the charges. The Board declined this offer.

Ms. Brownstein then told the Board and the Hearing Officer that she objects to these proceedings as unconstitutional and some of the definitions in the Allegations of the Order and Notice of Hearing as unconstitutional. She said she also believes that Ms. Sherman, as Hearing Officer, is both unconstitutional and violates her clients due process rights because she is employed by the Attorney General's office and so is the Board staff attorney. Ms. Sherman told Ms. Brownstein that her objections were duly noted.

Tom Gay called Rusty McSpadden, P.D., to testify. Dr. McSpadden said that LNI was licensed in 2002. He said they distribute novelty items such as lighters, key chains, pseudoephedrine, etc. He told the Board that they sell to convenience stores, truck stops, and other entities. He also said that he interviewed an employee of LNI, Robert Rohm. He said Mr. Rohm told him that he received products, including List I chemicals, from the Quincy, Illinois location by Federal Express. He said the products were then placed in a storage building until he could deliver them to customers. Dr. McSpadden said he visited the storage unit, which was not licensed by the Board of Pharmacy, and talked to the unit manager – he said there was no security system in place and no climate control inside the facility. Dr. McSpadden told the Board that he obtained LNI records from DEA and made an analysis of the List I chemical products that were sold in Arkansas.

Mr. Gay then called George Gadd, with DEA, to testify. Mr. Gadd told the Board that LNI sold pseudoephedrine products to non-traditional outlets such as head shops and fish markets – places that a person would not normally go to buy medications. He said that pseudoephedrine is necessary to make methamphetamine. He also said that meth is a well-known problem in Arkansas, and there are stories regarding meth almost daily in the Arkansas media. Mr. Gadd also told the Board that the mini storage facility that Dr. McSpadden referred to is not licensed by the DEA. He said DEA has not received any suspicious order reports from LNI.

Mr. Gay called Steve Barbee to testify. Mr. Barbee told the Board that he is the owner of the Back Alley and a customer of LNI. He said the Back Alley is a used clothing store and they also sell novelty items. He said he bought pseudoephedrine products from LNI, and he was told by his customers that pseudo was used to make meth.

Mr. Gay then called Don Price to testify. Mr. Price said that he worked at Lady's World, which is an adult arcade. He said they ordered pseudoephedrine products from LNI. He also told the Board that on several

occasions Robert Rohm told him that he needed to order products other than pseudo because he was selling too much of it.

Ms. Brownstein called on Greg Gardner to testify. Mr. Gardner told the Board that he is the President and CEO of Landmark Networks. He said that Landmark started in 2000. He said they have about 50 customers in Arkansas and they mostly sell to convenience stores. He said the company's goal is to be a company that sells novelty items, not just List I chemical products. Mr. Gardner said that 75 percent of his company's sales in Arkansas are from List I chemicals whereas the total is 30 percent nationally. He said that a suspicious transaction is a customer that says they are selling pseudo for the purpose of making meth. He told the Board that he does not believe he failed to report suspicious activities because he did not notice anything unusual about what the customers were buying.

Chris Anderson with DEA also testified in this matter.

BOARD ACTION:

Dr. Norris made the motion that in the matter of Landmark Networks, Inc., List I Chemical Wholesaler #C-00086, allegations A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, and A-9 were found to be true, and charges C-1, C-2, C-3, C-4, C-5, C-6, C-7, and C-8 were proven. Therefore, the Wholesale Distributor of List I Chemicals license of Landmark Networks, Inc. is suspended for a period of three years and a monetary penalty of \$175,000 is issued and payable upon the completion of the suspension. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Friday, June 11, 2004

The meeting was called to order by Lenora Newsome, P.D., President. Members present were Larry Autry, P.D.; Buddy Bowden, P.D.; Sharon Capps, RN; Ross Holiman, B.S., H.Ed.; Larry McGinnis, Pharm.D.; and Ronnie Norris, P.D. Staff members present were Charles Campbell, Pharm.D., Executive Director; Margaret Lincourt, Chief Fiscal Officer; Lana Whitmore, Administrative Assistant; Ron Ewing, P.D.; Rusty McSpadden, P.D.; and Jim Myatt, P.D.

Dr. Campbell presented the Board with an Agreed Temporary Order for **Dwight Mann, P.D., #6873**. Dr. Mann signed the order, and agreed not to practice as an Arkansas pharmacist or be physically present in the prescription department of a pharmacy until he appears before the Board or agrees to a Consent Order.

BOARD ACTION:

Dr. Autry made the motion to accept the Agreed Temporary Order for Dwight Mann, P.D., #6873 as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented the Board with an Agreed Temporary Order for **Michael Renick, P.D., #8906**. Dr. Renick signed the order, and agreed not to practice as an Arkansas pharmacist or be physically present in the prescription department of a pharmacy until he appears before the Board or agrees to a Consent Order.

BOARD ACTION:

Dr. Norris made the motion to accept the Agreed Temporary Order for Michael Renick, P.D., #8906 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented the Board with an Agreed Temporary Order for **Rick Hendrix, P.D., #5545**. Dr. Hendrix signed the order, and agreed not to practice as an Arkansas pharmacist or be physically present in the prescription department of a pharmacy until he appears before the Board or agrees to a Consent Order.

BOARD ACTION:

Dr. Newsome made the motion to accept the Agreed Temporary Order for Rick Hendrix, P.D., #5545 as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented the Board with an Agreed Temporary Order for **Laquita White, P.D., #6999**. Dr. White signed the order, and agreed not to practice as an Arkansas pharmacist or be physically present in the prescription department of a pharmacy until she appears before the Board or agrees to a Consent Order.

BOARD ACTION:

Dr. Bowden made the motion to accept the Agreed Temporary Order for Laquita White, P.D., #6999 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented a Consent Order for **Walgreens Pharmacy #07283, #AR-20366**. The order was signed admitting to the charge that the respondent published an advertisement that included a coupon for \$5.00 on new or transferred prescriptions, which is a violation of Board Regulation. By signing the order, the respondent has agreed to pay a monetary penalty of \$1,000 within 10 business days after the date of the Board's approval of this Consent Order.

BOARD ACTION:

Mr. Holiman made the motion to accept the Consent Order for Walgreens Pharmacy #07283, #AR-20366 as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented a Consent Order for **Paragould Pharmacy, #AR-20372**. The order was signed admitting to the charge that the respondent distributed a flyer that included a coupon for \$5.00 off the price of a transferred prescription, which is a violation of Board Regulation. By signing the order, the respondent has agreed to pay a monetary penalty of \$1,000 within 10 business days after the date of the Board's approval of this Consent Order.

BOARD ACTION:

Dr. Autry made the motion to accept the Consent Order for Paragould Pharmacy, #AR-20372 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented the Board with a list of pharmacists who agreed to sign a Consent Order. The following list of pharmacists did not meet the continuing education requirements due by December 31, 2003:

Steven Ramsey, P.D., #7373
Heidi Tramel, P.D., #8689
Phillip Tygart, P.D., #6008
Samuel Dickens, P.D., #7359
Arlynn Rector, P.D., #7656
Michael Jeffrey, P.D., #6065

Katherine Weintz, P.D., #7669
Robert Lewis, P.D., #5607
Susie Morgan, P.D., #5458
Phillip Wilkins, P.D., #8259
Janice Bennett, P.D., #9348

BOARD ACTION:

Dr. Autry made the motion to approve the Continuing Education Consent Orders as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented a Consent Order from the Committee Review hearing on May 20, 2004, for **Katherine Weintz, P.D., #7669; Bridgeway Hospital Pharmacy, #H-01025; and United Methodist Behavioral Health Hospital, #H-01158**. Each respondent signed the Order agreeing to one year of probation for Dr. Weintz and a monetary penalty of \$500 payable by June 30, 2004, a monetary penalty of \$500 payable by June 30, 2004 for Bridgeway Hospital Pharmacy, and a monetary penalty of \$500 payable by June 30, 2004 for Methodist Behavioral Health Hospital.

BOARD ACTION:

Dr. Norris made the motion to accept the Consent Order for Katherine Weintz, P.D., #7669; Bridgeway Hospital Pharmacy, #H-01025; and United Methodist Behavioral Health Hospital, #H-01158, as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented a Consent Order from the Committee Review hearing on May 20, 2004, for **Brandy Stoll, Pharmacy Technician, #87857**. Ms. Stoll signed the Order agreeing to be placed on probation for a period of one year after the date that she resumes work as a pharmacy technician.

BOARD ACTION:

Mr. Holiman made the motion to accept the Consent Order for Brandy Stoll, Pharmacy Technician, #87857, as presented. Dr. McGinnis seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented a Consent Order from the Committee Review hearing on May 20, 2004, for **Amy Davenport, P.D., #8896, and Crittenden Memorial Hospital, #H-00095**. Each respondent signed the Order agreeing to one year of probation for Dr. Davenport and a monetary penalty of \$500 payable by June 30, 2004, and a monetary penalty of \$1,000 payable by June 30, 2004 for Crittenden Memorial Hospital.

BOARD ACTION:

Dr. Norris made the motion to accept the Consent Order for Amy Davenport, P.D., #8896, and Crittenden Memorial Hospital, #H-00095, as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

BOARD ACTION:

Dr. Autry made the motion to require a pharmacy technician to submit proof that he/she is a high school graduate or has received a GED. Dr. Bowden seconded the motion. The vote for the motion was unanimous.

Dr. Campbell presented a Consent Order for IVESCO. A representative of ownership from IVESCO signed the Order agreeing to a monetary penalty of \$56,000 payable by June 30, 2004.

BOARD ACTION:

Dr. Autry made the motion to accept the Consent Order for IVESCO as presented. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Dr. Campbell discussed issues with regard to criminal background checks and the convictions that are turning up on the reports. He said that there have been a variety of convictions from hot check charges and battery to DWI and criminal mischief. Dr. Campbell said the staff has the authority to approve or reject some of the applications. The Board advised Dr. Campbell to use his best judgment.

A Public Hearing on Regulations was called to order at 9:30 a.m., as published.

Regulation 04 – Pharmacy

The proposed changes to this regulation create a student health clinic pharmacy permit, clarify the language for the renewal of a pharmacy permit, and specify the mailing address for new pharmacy permits.

There was no public comment for or against this regulation change.

BOARD ACTION:

Dr. Autry made the motion to approve the amendment to Regulation 04 as presented. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Regulation 08 – Wholesale Distribution

The proposed changes to this regulation will define a change of ownership for a wholesale distributor of medical equipment, legend devices, and/or medical gases.

There was no public comment for or against this regulation change.

BOARD ACTION:

Dr. Norris made the motion to approve the amendment to Regulation 08 as presented. Dr. Autry seconded the motion. The vote for the motion was unanimous.

Regulation 09 – Pharmaceutical Care/Patient Counseling

The proposed changes to this regulation will replace the term “qualified pharmacy employees” with the current term “pharmacy technicians,” define the Authority to Administer, bring the regulation into agreement with Arkansas Statute, specify the record keeping requirements, and clarify the continuing education requirements. Additional changes will remove the requirements for diabetes self-management training for pharmacists, create a subsection to define disease state management, and remove the practical examination component in accordance with national standards.

Dean Sykes, P.D., thanked the Board for taking positive steps with regard to disease state management.

Larry Autry, P.D., said he was opposed to requiring more stringent requirements for administering vaccines.

John Kirkland said he instructs the immunization class at UAMS, and that he instructs his students to write down the Lot number for recall purposes.

BOARD ACTION:

Ms. Capps made the motion to approve the amendment to Regulation 09 as presented. Mr. Holiman seconded the motion. Dr. Autry abstained from voting – the motion passes.

Dr. Campbell reminded the Board that the MALTAGON and District VI meetings were coming up. He asked each member to tell Ms. Lincourt if any of them planned on attending the meetings.

Cliff McQuay, from **Cliff McQuay Sales, List I Chemical Wholesaler, #C-00016** appeared before the Board in answer to an Order and Notice of Hearing. Some allegations in this case were that Cliff McQuay Sales failed to report to the Board, or to the Drug Enforcement Administration, suspicious transactions of any sale of pseudoephedrine to any of his customers. Dr. Newsome called the meeting to order and turned the proceedings over to the Hearing Officer, Nicana Sherman. Tom Gay, of the Attorney General's Office, represented the Board staff, and Bill Stanley represented the respondent.

Tom Gay called Jim Myatt, P.D., to testify. He said that Arkansas law requires List I chemical wholesalers to keep copies of their records. He said he called Mr. McQuay to request copies of his invoices. He said he received additional invoices from DEA. Dr. Myatt said that once Mr. McQuay obtained his license from the Arkansas State Board of Pharmacy he only sold pseudo products. He said the invoices reflected that most of his sales were at the limit or over the limit of sales set by Mr. McQuay. He testified regarding summaries of pseudo sales at different convenience stores and gas stations that Mr. McQuay sold to. Dr. Myatt said he interviewed other wholesalers and compared their limitations to Cliff McQuay Sales – he said all the other companies sales were lower.

Mr. Gay then called on George Gadd to testify. Mr. Gadd said he is a task force officer with the DEA. He said that pseudoephedrine is a necessary ingredient for the illicit manufacturing of methamphetamine. He told the Board that List I Chemical Wholesalers are supplied with suspicious order guidelines by the DEA and with a warning notice for the wholesalers to provide to their retail customers. He said DEA talked to Mr. McQuay about only selling pseudo products and from buying List I Chemicals from a facility that is not licensed with the Arkansas State Board of Pharmacy. Mr. Gadd told the Board that Mr. McQuay, on good faith, surrendered his DEA registration, but that he could reapply for it at any time. He also said that Mr. McQuay has never reported any suspicious orders to the DEA.

Mr. Stanley called Cliff McQuay to testify. Mr. McQuay told the Board that he began selling health and beauty aids in 1958. He also said that he was selling pseudo products before they were regulated (i.e., mini-thins). He said he had two operations so he transferred his health & beauty aid business to his son. Mr. McQuay testified that he explained to the DEA that he was only going to sell pseudo products and the DEA did not indicate to him that it would be a problem. He told the Board that he knew pseudoephedrine was used to make meth, but that he didn't think anything was suspicious because he knew all of his customers and had told them to only sell two packs at a time. Mr. McQuay told the Board that he has surrendered his DEA license and he is now retired. He said he is also willing to turn in his Arkansas List I Chemical permit.

BOARD ACTION:

Dr. Norris made the motion that in the matter of Cliff McQuay Sales, List I Chemical Wholesaler #C-00016, allegations A-1, A-2, A-3, A-4, A-5, A-6, A-7, and A-8 were found to be true, and charges C-1, and C-2 were proven. Therefore, the Wholesale Distributor of List I Chemicals license of Cliff McQuay Sales is suspended for a period of one year and a monetary penalty of \$163,000 is issued and payable upon the completion of the suspension. Mr. Holiman seconded the motion. The vote for the motion was unanimous.

Richard Mezzio, with **Harrison Company, LLC**, appeared before the Board to request an Arkansas List I Chemical permit. Mr. Mezzio said his company has been shipping in Arkansas, but they were unaware that an Arkansas license was required until they received a call from Chris Anderson with the DEA. He said they currently have 60 to 80 customers in Arkansas, but they have ceased shipping List I chemicals to them pending the receipt of their Arkansas permit. Mr. Mezzio told the Board that they sell their products to convenience stores and tobacco outlets. He said that 85 percent of his business is tobacco products, he also sells health and beauty aids, candy, snacks, and beverages. He told the Board that only one fourth of one percent of the products he sells is List I chemicals. Chris Anderson told the Board that DEA is conducting a criminal investigation of this company.

BOARD ACTION:

Dr. Autry made the motion to table this request until the Board of Pharmacy receives the results of the DEA investigation. Dr. Norris seconded the motion. The vote for the motion was unanimous.

Harold Bailey and John Mudri, representatives of **Petry Novelty, Inc.**, appeared before the Board to request an Arkansas List I Chemical permit. Mr. Bailey told the Board that Petry Novelty is licensed in Alabama, but not in Arkansas. He said they were advised by Chris Anderson with the DEA that they needed an Arkansas license and they stopped shipping List I chemical products into Arkansas pending the receipt of their Arkansas permit. Chris Anderson told the Board that DEA has subpoenaed the company's records and that they are under investigation. The Board said they would table this request until the Board of Pharmacy receives the results of the DEA investigation. They said if the DEA report is satisfactory, the applicants may not have to reappear before the Board – the applications may be approved administratively.

Dave Clem and Jim Haynes appeared before the Board to request Arkansas List I Chemical permits for **AMCON Distributing Company in Springfield, Missouri, and Quincy, Illinois**. Mr. Clem told the Board that his company was notified by DEA on April 28, 2004, that they needed a permit to ship List I Chemical products into Arkansas. He said they only sell products like Nyquil, etc. He also said that they follow strict guidelines set by the DEA and that they report suspicious orders immediately. Mr. Clem said he recommends that Arkansas follow the same rules as Oklahoma and take the List I Chemical products off of convenience store shelves.

Glyn Wilson, Randy Hickey, and Clifford Black appeared before the Board on behalf of **McLane Southern** to request a List I Chemical Permit in Arkansas. Mr. Wilson told the Board that his company was in the same situation as the other companies. He said they were not aware they needed a permit in Arkansas until they were contacted by DEA.

Dr. Campbell went over the Board of Pharmacy policy with all of the List I Chemical applicants. He said he understood that they were not aware of the Arkansas licensing requirement because the Arkansas State Board of Pharmacy did not know the companies existed and had no way to inform them of the requirements in Arkansas. He reminded the companies that if they receive good reports from DEA they will not be required to reappear before the Board in order to become licensed.

BOARD ACTION:

Dr. Autry made the motion that the following slate of officers be elected:

Larry McGinnis, Pharm.D.	President
Ronnie Norris, P.D.	Vice-President
Buddy Bowden, P.D.	Secretary

Ms. Capps seconded the motion. The vote for the motion was unanimous.

Johnny Powell, P.D., #6650 appeared before the Board in answer to an Order and Notice of Hearing. The allegations in this case were that Dr. Powell dispensed prescription drugs to a patient without the authorization of a practitioner, and created fictitious prescriptions in Sav-Mart Pharmacy for each of the prescriptions received by the patient. Dr. Newsome called the meeting to order and turned the proceedings over to the Hearing Officer, Nicana Sherman. Tom Gay, of the Attorney General's Office, represented the Board staff, and Kathleen Compton represented the respondent. Ronnie Norris, P.D., recused himself from this hearing.

Mr. Gay called on Cornelia Bryant to testify. Ms. Bryant told the Board that she has been using Sav-Mart Pharmacy for over ten years. She said in 1992 she went to the pharmacy and told Dr. Powell that she was having trouble with her sinuses and asked him what she should take. He gave her some over the counter medicine, but it did not help her feel better. She told the Board she went back to the pharmacy a few days later and told Dr. Powell that the medicine did not help her sinus trouble. He then gave her a prescription bottle filled with Dexamethasone 0.75 – she said the bottle had her name and information on it like a regular prescription. It also had the doctor listed as Dr. Simpson and she said she has never been to a Dr. Simpson. Ms. Bryant said that she would take the bottle back to the pharmacy and he would always refill it for her, and Dr. Powell told her not to tell anyone about the pills. She also said that he gave her HC Tussive without her having a prescription from a doctor. She told the Board that she began experiencing bruising in 1996 and has since begun experiencing facial swelling, rashes, and pain in her hip joints. She said when her sons found out Dr. Powell was giving her prescription medication without an actual prescription they filed a complaint with the Board of Pharmacy.

Mr. Gay then called on Jim Myatt to testify. Dr. Myatt testified regarding Dr. Powell's licensing history and the side effects of prolonged use of Dexamethasone. He said when he began the investigation Ms. Bryant told him that she had been receiving prescription medication from Sav-Mart Pharmacy, but that she did not have prescriptions for the medicine. Dr. Myatt told the Board that he interviewed the doctors and they said they did not prescribe the medicine in question for Ms. Bryant.

Ms. Compton then called on Siri Richter. Ms. Richter told the Board that she is a Certified Registered Nurse Practitioner. She said she worked at Lake Village Clinic for Dr. Russell from March 1995 through November 2003. Ms. Richter testified regarding the procedures at Lake Village Clinic with regard to calling in new

prescriptions or authorizing refills to pharmacies. She told the Board that another nurse at the clinic personally told her that Ms. Bryant needed a refill on her HC Tussive, so she wrote it on a piece of paper and went to the pharmacy to authorize the refill. Ms. Richter testified she sometimes keeps these authorizations in her purse, and pulled a piece of paper from her purse, which was entered as an exhibit. She could not recall the name of the physician who authorized it, but indicated it was common to just place the medical director's name on the prescription. She then said that sometimes refills do not get documented in a patient's chart. She told the Board that she has never known Dr. Powell to do anything unprofessional.

Ms. Compton then called on Johnny Powell, P.D., to testify. Dr. Powell told the Board that he was shocked when Dr. Myatt called him regarding the complaint. He said that he has always had a good relationship with Ms. Bryant. He told the Board he gave Dr. Myatt the printout he requested and he began to call the doctors to verify the prescriptions. He said he called Dr. Simpson's office and was told that Ms. Bryant was not a patient there and they had already spoke to someone from the Board of Pharmacy. He said he called Dr. Harris' office and received the same results. He said he could not understand how his records could be so wrong. He told the Board that he has changed some policies in his pharmacy to keep perpetual errors like this from occurring. Dr. Powell said he never advised Ms. Bryant to not tell her doctor about her prescriptions, and he said she was a multi-doctor patient who usually got what she wanted. Dr. Powell said he values his pharmacist license and would not do anything to jeopardize it.

BOARD ACTION:

Dr. Bowden made the motion that in the matter of Johnny Powell, P.D., #6650, allegations A-1, A-2, A-3, A-4, and A-5 were found to be true, and charges C-3, C-4, and C-5 were proven. Charges C-1 and C-2 were unproven. Therefore, Dr. Powell's Arkansas pharmacist license is suspended for three days within the next thirty days, he is ordered to retake the Arkansas Jurisprudence Examination within thirty days, and to pay a monetary penalty of \$5,000 within sixty days. In addition, Dr. Powell's Arkansas pharmacist licensed is to be placed on probation for a period of five years. Dr. Autry seconded the motion. The vote for the motion was unanimous.

The meeting was adjourned.

Prepared By:

Approved for the board:

Lana Whitmore

Larry McGinnis, Pharm.D., President